

Message

From: Michuda, Colleen E. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DFF0439E10B74D14A3C7BF73069F5CAC-MICHUDA, COLLEEN]
Sent: 11/24/2014 6:41:07 PM
To: Fisher, Elizabeth [EFisher@ncdoj.gov]
Subject: RE: Post-closure "operator" liability

Hi Elizabeth. I hope all is well. I saw Bud last week here in Atlanta at the State Directors' meeting and he said that you won your motion for summary judgement in this case. Congratulations! Please send the order when you get a chance. Also, he said that you are working with him on the permit where you've got the separate operator for CA purposes. If you have a chance, I'd like to chat with you about that. I'm trying to keep track of all the different scenarios we have come across with respect to "parceling" issues and how we are resolving them within the Region. We have generally been cautioning strongly against carving out permit obligations and allocating responsibility within a permit, especially with regard to SWMUs. I know your facts here were somewhat different than some of our other scenarios, but I can give you some input on how we've dealt with the permit allocation issue in some other cases. I know we're approaching the holiday, so let me know when you (and Bud if you think he'd want to participate) could chat. Thanks. --Colleen

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From: Fisher, Elizabeth [mailto:EFisher@ncdoj.gov]
Sent: Tuesday, October 07, 2014 8:55 AM
To: Michuda, Colleen E.
Subject: RE: Post-closure "operator" liability

Thanks for the offer of assistance—if any other helpful cases/guidance jump to mind then I would be glad to hear about them for my Reply. Yes, WASCO's main argument seems to be that it never operated an active business onsite. WASCO has also tried to downplay its role in post-closure operations, but the record shows it did a lot more than simply writing checks. I will keep you updated, and I will mention the directors' meeting to Bud.

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From: Michuda, Colleen E. [mailto:Michuda.Colleen@epa.gov]
Sent: Monday, October 06, 2014 4:54 PM

To: Fisher, Elizabeth
Subject: RE: Post-closure "operator" liability

Elizabeth, Thanks so much for forwarding this on to me. You did a great job on this. It's great to have this good of a discussion on operator liability. If you wouldn't mind, please keep me posted on the filings and developments in the case. I assume that WASCO's main argument is just that it never owned or operated the landfill. . . Please let me know if EPA can provide you with any assistance. We are keeping a close eye on all of these types of issues involving people trying to avoid permit liability. Also, the next RCRA state directors' meeting is in November in Atlanta – this might be a good case study if Bud wanted to propose it for the agenda. Take care and thanks again.

--Colleen

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From: Fisher, Elizabeth [<mailto:EFisher@ncdoj.gov>]
Sent: Monday, October 06, 2014 1:23 PM
To: Michuda, Colleen E.
Subject: Post-closure "operator" liability

Colleen,

We spoke close to a year ago about RCRA's post-closure requirements as they apply to "operators." I thought you might be interested in seeing the motion for summary judgment that I recently filed (without the 1200 pages of exhibits) on behalf of NCDENR's Hazardous Waste Section. Not sure when we will have oral argument, as opposing counsel has requested an extension until November 7 to file a response.

Thanks,

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